

THE HONORABLE ROBERT S. LASNIK

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOHN M. KATHER,

Plaintiff,

v.

SUN LIFE ASSURANCE COMPANY OF
CANADA,

Defendant.

NO. CV06-0161RSL

STIPULATION AND ORDER RE:
BRIEFING SCHEDULE TO RESOLVE
ISSUE PERTAINING TO
PLAINTIFF'S BENEFIT LEVEL

I. BACKGROUND

This is an ERISA action for long-term disability benefits brought by plaintiff John Kather against Sun Life Assurance Company. In the course of discussing settlement of the case, the parties discovered a discrepancy concerning the amount of benefits due Mr. Kather if he is determined to be disabled. In short, and without waiver to either party's position, the policy issued by Sun Life appears to limit payments for disability to 65% of Mr. Kather's pre-disability earnings, while certain documents appear to indicate that Mr. Kather may have been eligible for benefits at a 75% of pre-disability earnings level.

1 The plaintiff subpoenaed his former employer in an effort to resolve the
 2 discrepancy. The parties submitted three stipulations to the Court extending the time
 3 to add additional parties pending receipt of the information for the employer. The
 4 employer responded to the subpoena, but the discrepancy still exists. The parties wish
 5 to stipulate to a process to resolve this discrete issue.

6 II. STIPULATION

7 Plaintiff Kather and Defendant Sun Life Assurance Company of Canada
 8 hereby stipulate to the following:

9 1. On September 15, 2006 each party will file a brief, no longer than
 10 12 pages in length, addressing the question of whether Sun Life Assurance Company is
 11 responsible for benefit payments at 65% or 75% of predisability earnings (if Mr. Kather
 12 is determined to be disabled as defined in the Plan).

13 2. On September 21, 2006 either party may file a responsive brief, no
 14 longer than 6 pages in length.

15 3. The issue will be noted for September 21, 2006.

16 4. Mr. Kather shall be permitted to amend his complaint to add third
 17 parties to the action if the Court determines either (1) that Sun Life is not responsible
 18 for payments at the 75% benefit level (if Mr. Kather is determined to be disabled), or
 19 (2) that the issue cannot be resolved as a matter of law due to the presence of fact
 20 issues. Such amendment shall occur within seven days of any such Order.

21 SIRIANNI YOUTZ
 22 MEIER & SPOONEMORE

23
 24 Dated: August 3, 2006.

/s/ Richard E. Spoonemore
 25 Richard E. Spoonemore (WSBA #21833)
 26 Attorneys for Plaintiff Kather

LANE POWELL PC

Dated: August 3, 2006. /s/ Robert J. Guite, by Richard E. Spoonemore,
per phone authorization 8/3/06

Robert J. Guite (WSBA #25753)
Attorneys for Defendant Sun Life

II. ORDER

Based upon the foregoing Stipulation, it is ordered that:


1. On September 15, 2006 each party will file a brief, no longer than 12 pages in length, addressing the question of whether Sun Life Assurance Company is responsible for benefit payments at 65% or 75% of pre-disability earnings (if Mr. Kather is determined to be disabled as defined in the Plan).

2. On September 21, 2006 either party may file a responsive brief, no longer than 6 pages in length.

3. The issue will be noted for September 21, 2006.

4. Mr. Kather shall be permitted to amend his complaint to add third parties to the action if the Court determines either (1) that Sun Life is not responsible for payments at the 75% benefit level (if Mr. Kather is determined to be disabled), or (2) that the issue cannot be resolved as a matter of law due to the presence of fact issues. Such amendment shall occur within seven days of any such Order.

DATED this 7th day of August, 2006.



Robert S. Lasnik
United States District Judge